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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

ROBERT LEE WEST,

3:15-cv-00715-ST

PLAINTIFF,

v.

**CITY OF PORTLAND, OREGON and
CITY OF PORTLAND POLICE BUREAU,**

**DEFENDANTS CITY OF PORTLAND,
OREGON AND CITY OF PORTLAND
POLICE BUREAU'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

DEFENDANTS.

For their answer to plaintiff's First Amended Complaint, defendants City of Portland, Oregon and City of Portland Police Bureau (hereinafter "City defendants") respond to plaintiff's allegations in corresponding numbered paragraphs, using plaintiff's paragraph headings, as follows:

PARTIES

1. City defendants admit the first sentence of ¶ 1 of the First Amended Complaint. With respect to the second and third sentences, City defendants are without sufficient knowledge to admit or deny the allegations contained in those sentences and therefore, they are denied.

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2. City defendants are without sufficient knowledge to admit or deny the allegations contained in ¶ 2 of plaintiff's First Amended Complaint, and therefore, they are denied.

3. City defendants admit that defendant City of Portland is an incorporated City in the state of Oregon and deny any remaining allegations contained in ¶ 3 of plaintiff's First Amended Complaint.

4. City defendants admit ¶ 4 of plaintiff's First Amended Complaint.

5. City defendants admit that the Portland Police Bureau is a bureau of the City of Portland, Oregon and that members of the bureau provide public safety and policing services, and deny any remaining allegations contained in ¶ 5 of the First Amended Complaint.

6. City defendants admit ¶ 6 of plaintiff's First Amended Complaint.

7. City defendants admit that the Portland Police Bureau is a bureau of the City of Portland, Oregon and that members of the bureau provide public safety and policing services, and deny any remaining allegations contained in ¶ 7 of plaintiff's First Amended Complaint.

JURISDICTION AND VENUE

8. City defendants admit ¶ 8 of plaintiff's First Amended Complaint.

9. City defendants admit ¶ 9 of plaintiff's First Amended Complaint.

10. City defendants admit that it received a document entitled tort claim notice regarding Mr. West on or about March 18, 2015, pursuant to ORS 30.275 and deny any remaining allegations contained in ¶ 10 of plaintiff's First Amended Complaint.

11. City defendants deny with respect to ORS 30.020 and aver that tort actions against public bodies are governed by ORS 30.260 *et. seq.* and deny any remaining allegations contained in ¶ 11 of plaintiff's First Amended Complaint.

12. City defendants admit plaintiff seeks damages of \$10,000 and deny any remaining allegations contained in ¶ 12 of plaintiff's First Amended Complaint.

FACTS RELATING TO PLAINTIFF'S CLAIM

13-14. City defendants are without sufficient knowledge to admit or deny the allegations contained in ¶¶ 13-14 of plaintiff's First Amended Complaint, and therefore, deny.

15. City defendants submit that this is an inappropriate allegation contrary to the Federal Rules of Civil Procedure because the allegation calls for a legal conclusion, and therefore this allegation is denied.

16-17. City defendants admit that police activities are frequently newsworthy and covered by the media. Remaining allegations call for speculation and City defendants are without sufficient knowledge to admit or deny the allegations contained in ¶¶ 16-17 of plaintiff's First Amended Complaint, and therefore, deny.

18. City defendants admit that some police activities are matters of public concern as alleged in ¶ 18, and deny remaining allegations contained in plaintiff's First Amended Complaint.

19. City defendants are without sufficient knowledge to admit or deny the allegations contained in ¶ 19 of plaintiff's First Amended Complaint, and therefore, deny.

20. City defendants admit ¶ 20 of plaintiff's First Amended Complaint.

21. City defendants are without sufficient knowledge to admit or deny the allegations contained in ¶ 21 of plaintiff's First Amended Complaint, and therefore, deny.

22. City defendants admit that there were Portland police officers on the streets of downtown Portland to monitor the protest on or about November 29 and 30, 2014, and that the officers were acting within the course and scope of their employment. City defendants deny any remaining allegations contained in ¶ 22 of plaintiff's First Amended Complaint.

23. City defendants admit that plaintiff was using some kind of a device to photograph/film various activities on November 29-30, 2014, and that this included police activities, and deny any remaining allegations contained in ¶ 23 of plaintiff's First Amended Complaint.

24. City defendants admit that at or near the intersection of 5th Ave. and Morrison St., the police used an inert distraction device and that this was photographed/filmed by Mr. West and deny any remaining allegations contained in ¶ 24 of plaintiff's First Amended Complaint.

25-26. City defendants aver that the item used was an inert distraction device and deny any remaining allegations contained in ¶¶ 25-26 of plaintiff's First Amended Complaint.

27. City defendants are without sufficient knowledge to admit or deny the allegations contained in ¶ 27 of plaintiff's First Amended Complaint, and therefore, deny.

28. City defendants admit that at or near the intersection of SW 2nd Ave. and SW Main St. Mr. West was present and filmed both protester and police activities and deny any remaining allegations contained in ¶ 28 of plaintiff's First Amended Complaint.

29-30. City defendants deny the allegations contained in, ¶¶ 29-30 of plaintiff's First Amended Complaint.

31-35. City defendants admit that plaintiff was arrested in the street and that Portland police gave various instructions to the protesters, including Mr. West, throughout the evening, and deny any remaining allegations contained in ¶¶ 31-35 of plaintiff's First Amended Complaint.

36. City defendants deny the allegations contained in ¶ 36 of plaintiff's First Amended Complaint.

37. City defendants admit that plaintiff was arrested and handcuffed, and all that entails, and deny any remaining allegations contained in ¶ 37 of plaintiff's First Amended Complaint.

38. City defendants deny the allegations contained in ¶ 38 of plaintiff's First Amended Complaint.

39. City defendants deny the allegations contained in ¶ 39 of plaintiff's First Amended Complaint.

40. City defendants deny the allegations contained in ¶ 40 of plaintiff's First Amended Complaint.

41. City defendants admit that plaintiff was given a citation and was also transported from the precinct in an ambulance and was examined at Legacy Emanuel Hospital. City defendants deny any remaining allegations contained in ¶ 41 of plaintiff's First Amended Complaint.

42. City defendants admit that plaintiff was at the hospital and that an MRI was performed, and deny any remaining allegations contained in ¶ 42 of plaintiff's First Amended Complaint.

43. City defendants deny the allegations contained in ¶ 43 of plaintiff's First Amended Complaint.

44. City defendants deny the allegations contained in ¶ 44 of plaintiff's First Amended Complaint.

45. The actions of Multnomah county prosecutors written in the "Prosecution Decline Memo" speak for themselves and deny any remaining allegations contained in ¶ 45 of plaintiff's First Amended Complaint.

46. City defendants deny the allegations contained in ¶ 46 of plaintiff's First Amended Complaint.

CLAIMS FOR RELIEF

CLAIM 1: 14 U.S.C. § 1963

COUNT I (VIOLATION OF 1ST AMENDMENT FREEDOM OF PRESS)

47. City defendants reallege the responses to ¶¶ 1-46, above, and the responses are fully incorporated by this reference.

48. City defendants deny the allegations contained in ¶ 48 of plaintiff's First Amended Complaint.

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49. City defendants deny the allegations contained in ¶ 49 of plaintiff's First Amended Complaint.

50. City defendants admit ¶ 50 of plaintiff's First Amended Complaint.

51. City defendants deny the allegations contained in ¶ 51 of plaintiff's First Amended Complaint.

52. City defendants deny the allegations contained in ¶ 52 of plaintiff's First Amended Complaint.

53. City defendants deny the allegations contained in ¶ 53 of plaintiff's First Amended Complaint.

54. City defendants deny the allegations contained in ¶ 54 of plaintiff's First Amended Complaint.

55. City defendants deny the allegations contained in ¶ 55 of plaintiff's First Amended Complaint.

56. City defendants deny the allegations contained in ¶ 56 of plaintiff's First Amended Complaint.

57. City defendants deny the allegations contained in ¶ 57 of plaintiff's First Amended Complaint.

CLAIM 1: 14 U.S.C. § 1963
COUNT II (VIOLATION OF 1ST AMENDMENT FREEDOM OF ASSEMBLY)

58. City defendants reallege the responses to ¶¶ 1-50, above, and the responses are fully incorporated by this reference.

59. City defendants deny the allegations contained in ¶ 59 of plaintiff's First Amended Complaint.

60. The terms "violen[ce]" and in particular "destructive behavior" are amenable to many different interpretations and depend on perspective and accordingly, City defendants deny

the allegations contained in ¶ 60 of plaintiff's First Amended Complaint.

61. City defendants deny the allegations contained in ¶ 61 of plaintiff's First Amended Complaint.

62. City defendants deny the allegations contained in ¶ 62 of plaintiff's First Amended Complaint.

63. City defendants deny the allegations contained in ¶ 63 of plaintiff's First Amended Complaint.

64. City defendants deny the allegations contained in ¶ 64 of plaintiff's First Amended Complaint.

65. City defendants deny the allegations contained in ¶ 65 of plaintiff's First Amended Complaint.

66. City defendants deny the allegations contained in ¶ 66 of plaintiff's First Amended Complaint.

**CLAIM 2: ASSULT/BATTERY
COUNT I (FLASH BANG)**

67. City defendants reallege the responses to ¶¶ 1-46, above, and the responses are fully incorporated by this reference.

68. City defendants deny the allegations contained in ¶ 68 of plaintiff's First Amended Complaint. Also, *see* responses to ¶¶ 24-27 above, incorporated herein.

69. City defendants deny the allegations contained in ¶ 69 of plaintiff's First Amended Complaint. Also, *see* responses to ¶¶ 24-27 and 68 above, incorporated herein.

70. City defendants deny the allegations contained in ¶ 70 of plaintiff's First Amended Complaint. Also, *see* responses to ¶¶ 24-27 and 68-69 above, incorporated herein.

71. City defendants deny the allegations contained in ¶ 71 of plaintiff's First Amended Complaint. Also, *see* responses to ¶¶ 24-27 and 68-70 above, incorporated herein.

72. City defendants deny the allegations contained in ¶ 72 of plaintiff's First Amended Complaint.

**CLAIM 2: ASSULT/BATTERY
COUNT II (CONTACT INCIDENT TO ARREST)**

73. City defendants reallege the responses to ¶¶ 1-46, above, and the responses are fully incorporated by this reference.

74. City defendants deny the allegations contained in ¶ 74 of plaintiff's First Amended Complaint. Also, *see* responses to ¶¶ 29-37 above, incorporated herein.

75. City defendants deny the allegations contained in ¶ 75 of plaintiff's First Amended Complaint. Also, *see* responses to ¶¶ 29-37 above, incorporated herein.

76. City defendants deny the allegations contained in ¶ 76 of plaintiff's First Amended Complaint.

**CLAIM 3: NEGLIGENCE
COUNT I (DEPRIVATION OF WATER AND CARE)**

77. City defendants reallege the responses to ¶¶ 1-46, above, and the responses are fully incorporated by this reference.

78. City defendants deny the allegations contained in ¶ 78 of plaintiff's First Amended Complaint.

79. City defendants deny the allegations contained in ¶ 79 of plaintiff's First Amended Complaint.

80. City defendants deny the allegations contained in ¶ 80 of plaintiff's First Amended Complaint.

81. City defendants deny the allegations contained in ¶ 81 of plaintiff's First Amended Complaint.

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82. City defendants deny the allegations contained in ¶ 82 of plaintiff's First Amended Complaint.

83. City defendants deny the allegations contained in ¶ 83 of plaintiff's First Amended Complaint.

84. City defendants deny the allegations contained in ¶ 84 of plaintiff's First Amended Complaint.

85. City defendants deny the allegations contained in ¶ 85 of plaintiff's First Amended Complaint.

86. City defendants deny the allegations contained in ¶ 86 of plaintiff's First Amended Complaint.

**CLAIM 3: NEGLIGENCE
COUNT II (IMPROPER USE OF FLASH BANG)
(ALTERNATIVE CLAIM TO CLAIM 2, COUNT I)**

87. City defendants reallege the responses to ¶¶ 1-46, above, and the responses are fully incorporated by this reference.

88. City defendants deny the allegations contained in ¶ 88 of plaintiff's First Amended Complaint.

89. City defendants deny the allegations contained in ¶ 89 of plaintiff's First Amended Complaint.

90. City defendants deny the allegations contained in ¶ 90 of plaintiff's First Amended Complaint.

91. City defendants deny the allegations contained in ¶ 91 of plaintiff's First Amended Complaint.

92. City defendants deny the allegations contained in ¶ 92 of plaintiff's First Amended Complaint.

93. City defendants deny the allegations contained in ¶ 93 of plaintiff's First Amended Complaint.

**CLAIM 4: FALSE ARREST
(ALTERNATIVE CLAIM TO CLAIM 1)**

94. City defendants reallege the responses to ¶¶ 1-46, above, and the responses are fully incorporated by this reference.

95. City defendants deny the allegations contained in ¶ 95 of plaintiff's First Amended Complaint.

96. City defendants deny the allegations contained in ¶ 96 of plaintiff's First Amended Complaint.

97. City defendants deny the allegations contained in ¶ 97 of plaintiff's First Amended Complaint.

98. City defendants deny the allegations contained in ¶ 98 of plaintiff's First Amended Complaint.

99. City defendants deny the allegations contained in ¶ 99 of plaintiff's First Amended Complaint.

100. City defendants deny the allegations contained in ¶ 100 of plaintiff's First Amended Complaint.

CITY DEFENDANTS' AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

101. Plaintiff has failed to state a claim against the City defendants.

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SECOND AFFIRMATIVE DEFENSE

(Improper Party)

102. The “Portland Police Bureau” is an improper party, not a suable entity and should be dismissed with prejudice.

THIRD AFFIRMATIVE DEFENSE

(Justification and Privilege)

103. The actions of City defendants were lawful, justified and privileged.

FOURTH AFFIRMATIVE DEFENSE

(No § 1983 Claim Against the City of Portland and Portland Police Bureau)

104. Plaintiff’s First Amended Complaint fails to properly plead a policy, practice or custom claim under § 1983 against the City of Portland and, accordingly, plaintiff’s First Amended Complaint against the City of Portland should be dismissed.

FIFTH AFFIRMATIVE DEFENSE

(OTCA and Limitation on Damages)

105. Plaintiff’s claims are subject to all the limitations, conditions, and immunities contained in the Oregon Tort Claims Act, ORS 30.260, *et seq.*, including, but not limited to, the limitation on damages.

SIXTH AFFIRMATIVE DEFENSE

(Comparative Fault)

106. Plaintiff’s arrest and damages, if any, were caused or contributed to by plaintiff’s own actions.

SEVENTH AFFIRMATIVE DEFENSE

(Consent)

107. Plaintiff consented to any detention, arrest, inspection, interrogation, and/or seizure performed by City defendants.

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EIGHTH AFFIRMATIVE DEFENSE

(No Constitutional Violation)

108. The actions by City defendants do not constitute constitutional violations.

NINTH AFFIRMATIVE DEFENSE

(ORS 20.080)

109. Plaintiff failed to comply with the provisions of ORS 20.080 for an award of attorneys' fees and costs and accordingly, any claim for fees and costs therein should be denied.

TENTH AFFIRMATIVE DEFENSE

(Attorney Fees – 42 U.S.C. § 1988)

110. Plaintiff's claims are unreasonable, frivolous, meritless and vexatious. City defendants are entitled to their attorney fees under 42 U.S.C. § 1988.

ELEVENTH AFFIRMATIVE DEFENSE

(Reservation of Right to Amend)

111. City defendants reserve the right to amend this Answer to allege additional affirmative defenses and other relief after the completion of discovery, if any.

WHEREFORE, having fully answered plaintiff's First Amended Complaint, City defendants pray that plaintiff's First Amended Complaint be dismissed and that judgment be entered in their favor and for their costs and disbursements incurred herein, in addition to such other relief as may be justified.

Dated: October 2, 2015

Respectfully submitted,

/s/ J. Scott Moede

J. SCOTT MOEDE, OSB # 934816

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